

ASSEMBLY BILL

No. 2346

Introduced by Assembly Member Gonzalez

February 21, 2014

An act to amend Sections 2746.51, 2836.1, and 3516 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2346, as introduced, Gonzalez. Nurse practitioners, certified nurse-midwives, and physician assistants: supervision.

Existing law, the Nursing Practice Act, provides for the licensure and regulation of the practice of nursing by the Board of Registered Nursing. Existing law authorizes a nurse practitioner and a certified nurse-midwife to furnish or order drugs or devices under specified circumstances subject to physician and surgeon supervision. Existing law prohibits a physician and surgeon from supervising more than 4 nurse practitioners and certified nurse-midwives at one time for purposes of furnishing drugs or devices. A violation of the Nursing Practice Act is a crime.

This bill would prohibit a physician and surgeon from supervising more than 6 nurse practitioners and certified nurse-midwives at one time for purposes of furnishing drugs or devices.

The Physician Assistant Practice Act provides for the licensure and regulation of physician assistants by the Physician Assistant Board within the jurisdiction of the Medical Board of California. Existing law authorizes a physician assistant to perform certain health care activities subject to physician and surgeon supervision. Existing law prohibits a physician and surgeon from supervising more than 4 physician assistants at one time, except as specified.

This bill would prohibit a physician and surgeon from supervising more than 6 physician assistants at one time, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2746.51 of the Business and Professions
- 2 Code is amended to read:
- 3 2746.51. (a) Neither this chapter nor any other provision of
- 4 law shall be construed to prohibit a certified nurse-midwife from
- 5 furnishing or ordering drugs or devices, including controlled
- 6 substances classified in Schedule II, III, IV, or V under the
- 7 California Uniform Controlled Substances Act (Division 10
- 8 (commencing with Section 11000) of the Health and Safety Code),
- 9 when all of the following apply:
- 10 (1) The drugs or devices are furnished or ordered incidentally
- 11 to the provision of any of the following:
- 12 (A) Family planning services, as defined in Section 14503 of
- 13 the Welfare and Institutions Code.
- 14 (B) Routine health care or perinatal care, as defined in
- 15 subdivision (d) of Section 123485 of the Health and Safety Code.
- 16 (C) Care rendered, consistent with the certified nurse-midwife's
- 17 educational preparation or for which clinical competency has been
- 18 established and maintained, to persons within a facility specified
- 19 in subdivision (a), (b), (c), (d), (i), or (j) of Section 1206 of the
- 20 Health and Safety Code, a clinic as specified in Section 1204 of
- 21 the Health and Safety Code, a general acute care hospital as defined
- 22 in subdivision (a) of Section 1250 of the Health and Safety Code,
- 23 a licensed *alternative* birth center as defined in Section 1204.3 of
- 24 the Health and Safety Code, or a special hospital specified as a
- 25 maternity hospital in subdivision (f) of Section 1250 of the Health
- 26 and Safety Code.
- 27 (2) The drugs or devices are furnished or ordered by a certified
- 28 nurse-midwife in accordance with standardized procedures or
- 29 protocols. For purposes of this section, standardized procedure
- 30 means a document, including protocols, developed and approved
- 31 by the supervising physician and surgeon, the certified
- 32 nurse-midwife, and the facility administrator or his or her designee.

1 The standardized procedure covering the furnishing or ordering
2 of drugs or devices shall specify all of the following:

3 (A) Which certified nurse-midwife may furnish or order drugs
4 or devices.

5 (B) Which drugs or devices may be furnished or ordered and
6 under what circumstances.

7 (C) The extent of physician and surgeon supervision.

8 (D) The method of periodic review of the certified
9 nurse-midwife's competence, including peer review, and review
10 of the provisions of the standardized procedure.

11 (3) If Schedule II or III controlled substances, as defined in
12 Sections 11055 and 11056 of the Health and Safety Code, are
13 furnished or ordered by a certified nurse-midwife, the controlled
14 substances shall be furnished or ordered in accordance with a
15 patient-specific protocol approved by the treating or supervising
16 physician and surgeon. For Schedule II controlled substance
17 protocols, the provision for furnishing the Schedule II controlled
18 substance shall address the diagnosis of the illness, injury, or
19 condition for which the Schedule II controlled substance is to be
20 furnished.

21 (4) The furnishing or ordering of drugs or devices by a certified
22 nurse-midwife occurs under physician and surgeon supervision.
23 For purposes of this section, ~~no~~ a physician and surgeon shall *not*
24 supervise more than ~~four~~ *six* certified nurse-midwives at one time.
25 Physician and surgeon supervision shall not be construed to require
26 the physical presence of the physician, but does include all of the
27 following:

28 (A) Collaboration on the development of the standardized
29 procedure or protocol.

30 (B) Approval of the standardized procedure or protocol.

31 (C) Availability by telephonic contact at the time of patient
32 examination by the certified nurse-midwife.

33 (b) (1) The furnishing or ordering of drugs or devices by a
34 certified nurse-midwife is conditional on the issuance by the board
35 of a number to the applicant who has successfully completed the
36 requirements of paragraph (2). The number shall be included on
37 all transmittals of orders for drugs or devices by the certified
38 nurse-midwife. The board shall maintain a list of the certified
39 nurse-midwives that it has certified pursuant to this paragraph and
40 the number it has issued to each one. The board shall make the list

1 available to the California State Board of Pharmacy upon its
2 request. Every certified nurse-midwife who is authorized pursuant
3 to this section to furnish or issue a drug order for a controlled
4 substance shall register with the United States Drug Enforcement
5 Administration.

6 (2) The board has certified in accordance with paragraph (1)
7 that the certified nurse-midwife has satisfactorily completed a
8 course in pharmacology covering the drugs or devices to be
9 furnished or ordered under this section. The board shall establish
10 the requirements for satisfactory completion of this paragraph.

11 (3) A physician and surgeon may determine the extent of
12 supervision necessary pursuant to this section in the furnishing or
13 ordering of drugs and devices.

14 (4) A copy of the standardized procedure or protocol relating
15 to the furnishing or ordering of controlled substances by a certified
16 nurse-midwife shall be provided upon request to any licensed
17 pharmacist who is uncertain of the authority of the certified
18 nurse-midwife to perform these functions.

19 (5) Certified nurse-midwives who are certified by the board and
20 hold an active furnishing number, who are currently authorized
21 through standardized procedures or protocols to furnish Schedule
22 II controlled substances, and who are registered with the United
23 States Drug Enforcement Administration shall provide
24 documentation of continuing education specific to the use of
25 Schedule II controlled substances in settings other than a hospital
26 based on standards developed by the board.

27 (c) Drugs or devices furnished or ordered by a certified
28 nurse-midwife may include Schedule II controlled substances
29 under the California Uniform Controlled Substances Act (Division
30 10 (commencing with Section 11000) of the Health and Safety
31 Code) under the following conditions:

32 (1) The drugs and devices are furnished or ordered in accordance
33 with requirements referenced in paragraphs (2) to (4), inclusive,
34 of subdivision (a) and in paragraphs (1) to (3), inclusive, of
35 subdivision (b).

36 (2) When Schedule II controlled substances, as defined in
37 Section 11055 of the Health and Safety Code, are furnished or
38 ordered by a certified nurse-midwife, the controlled substances
39 shall be furnished or ordered in accordance with a patient-specific

1 protocol approved by the treating or supervising physician and
2 surgeon.

3 (d) Furnishing of drugs or devices by a certified nurse-midwife
4 means the act of making a pharmaceutical agent or agents available
5 to the patient in strict accordance with a standardized procedure
6 or protocol. Use of the term “furnishing” in this section shall
7 include the following:

8 (1) The ordering of a drug or device in accordance with the
9 standardized procedure or protocol.

10 (2) Transmitting an order of a supervising physician and
11 surgeon.

12 (e) “Drug order” or “order” for purposes of this section means
13 an order for medication or for a drug or device that is dispensed
14 to or for an ultimate user, issued by a certified nurse-midwife as
15 an individual practitioner, within the meaning of Section 1306.03
16 of Title 21 of the Code of Federal Regulations. Notwithstanding
17 any other provision of law, (1) a drug order issued pursuant to this
18 section shall be treated in the same manner as a prescription of the
19 supervising physician; (2) all references to “prescription” in this
20 code and the Health and Safety Code shall include drug orders
21 issued by certified nurse-midwives; and (3) the signature of a
22 certified nurse-midwife on a drug order issued in accordance with
23 this section shall be deemed to be the signature of a prescriber for
24 purposes of this code and the Health and Safety Code.

25 SEC. 2. Section 2836.1 of the Business and Professions Code
26 is amended to read:

27 2836.1. Neither this chapter nor any other provision of law
28 shall be construed to prohibit a nurse practitioner from furnishing
29 or ordering drugs or devices when all of the following apply:

30 (a) The drugs or devices are furnished or ordered by a nurse
31 practitioner in accordance with standardized procedures or
32 protocols developed by the nurse practitioner and the supervising
33 physician and surgeon when the drugs or devices furnished or
34 ordered are consistent with the practitioner’s educational
35 preparation or for which clinical competency has been established
36 and maintained.

37 (b) The nurse practitioner is functioning pursuant to standardized
38 procedure, as defined by Section 2725, or protocol. The
39 standardized procedure or protocol shall be developed and

1 approved by the supervising physician and surgeon, the nurse
2 practitioner, and the facility administrator or the designee.

3 (c) (1) The standardized procedure or protocol covering the
4 furnishing of drugs or devices shall specify which nurse
5 practitioners may furnish or order drugs or devices, which drugs
6 or devices may be furnished or ordered, under what circumstances,
7 the extent of physician and surgeon supervision, the method of
8 periodic review of the nurse practitioner's competence, including
9 peer review, and review of the provisions of the standardized
10 procedure.

11 (2) In addition to the requirements in paragraph (1), for Schedule
12 II controlled substance protocols, the provision for furnishing
13 Schedule II controlled substances shall address the diagnosis of
14 the illness, injury, or condition for which the Schedule II controlled
15 substance is to be furnished.

16 (d) The furnishing or ordering of drugs or devices by a nurse
17 practitioner occurs under physician and surgeon supervision.
18 Physician and surgeon supervision shall not be construed to require
19 the physical presence of the physician, but does include (1)
20 collaboration on the development of the standardized procedure,
21 (2) approval of the standardized procedure, and (3) availability by
22 telephonic contact at the time of patient examination by the nurse
23 practitioner.

24 (e) For purposes of this section, ~~no~~ a physician and surgeon
25 shall *not* supervise more than ~~four~~ six nurse practitioners at one
26 time.

27 (f) (1) Drugs or devices furnished or ordered by a nurse
28 practitioner may include Schedule II through Schedule V controlled
29 substances under the California Uniform Controlled Substances
30 Act (Division 10 (commencing with Section 11000) of the Health
31 and Safety Code) and shall be further limited to those drugs agreed
32 upon by the nurse practitioner and physician and surgeon and
33 specified in the standardized procedure.

34 (2) When Schedule II or III controlled substances, as defined
35 in Sections 11055 and 11056, respectively, of the Health and Safety
36 Code, are furnished or ordered by a nurse practitioner, the
37 controlled substances shall be furnished or ordered in accordance
38 with a patient-specific protocol approved by the treating or
39 supervising physician. A copy of the section of the nurse
40 practitioner's standardized procedure relating to controlled

1 substances shall be provided, upon request, to any licensed
2 pharmacist who dispenses drugs or devices, when there is
3 uncertainty about the nurse practitioner furnishing the order.

4 (g) (1) The board has certified in accordance with Section
5 2836.3 that the nurse practitioner has satisfactorily completed a
6 course in pharmacology covering the drugs or devices to be
7 furnished or ordered under this section.

8 (2) A physician and surgeon may determine the extent of
9 supervision necessary pursuant to this section in the furnishing or
10 ordering of drugs and devices.

11 (3) Nurse practitioners who are certified by the board and hold
12 an active furnishing number, who are authorized through
13 standardized procedures or protocols to furnish Schedule II
14 controlled substances, and who are registered with the United
15 States Drug Enforcement Administration, shall complete, as part
16 of their continuing education requirements, a course including
17 Schedule II controlled substances based on the standards developed
18 by the board. The board shall establish the requirements for
19 satisfactory completion of this subdivision.

20 (h) Use of the term “furnishing” in this section, in health
21 facilities defined in Section 1250 of the Health and Safety Code,
22 shall include (1) the ordering of a drug or device in accordance
23 with the standardized procedure and (2) transmitting an order of
24 a supervising physician and surgeon.

25 (i) “Drug order” or “order” for purposes of this section means
26 an order for medication which is dispensed to or for an ultimate
27 user, issued by a nurse practitioner as an individual practitioner,
28 within the meaning of Section ~~1306.02~~ 1306.03 of Title 21 of the
29 Code of Federal Regulations. Notwithstanding any other provision
30 of law, (1) a drug order issued pursuant to this section shall be
31 treated in the same manner as a prescription of the supervising
32 physician; (2) all references to “prescription” in this code and the
33 Health and Safety Code shall include drug orders issued by nurse
34 practitioners; and (3) the signature of a nurse practitioner on a drug
35 order issued in accordance with this section shall be deemed to be
36 the signature of a prescriber for purposes of this code and the
37 Health and Safety Code.

38 SEC. 3. Section 3516 of the Business and Professions Code is
39 amended to read:

1 3516. (a) Notwithstanding any other provision of law, a
2 physician assistant licensed by the board shall be eligible for
3 employment or supervision by any physician and surgeon who is
4 not subject to a disciplinary condition imposed by the Medical
5 Board of California prohibiting that employment or supervision.

6 (b) ~~No~~A physician and surgeon shall *not* supervise more than
7 ~~four~~ *six* physician assistants at ~~any~~ one time, except as provided
8 in Section 3502.5.

9 (c) The Medical Board of California may restrict a physician
10 and surgeon to supervising specific types of physician assistants
11 including, but not limited to, restricting a physician and surgeon
12 from supervising physician assistants outside of the field of
13 specialty of the physician and surgeon.